

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ACS Television, L.L.C.)	File Number EB-01-AN-053
)	
K25FM, K27FJ, K39EP, K43EY, K44EQ,)	NAL/Acct. No. 20023278001
K46EN, K49EE, K50EP, K52FI, K53FN,)	
K63FT, K64FA, K65GM, K67GT, K68FF)	FRN 599308
)	
510 L Street, Suite 500)	
Anchorage, Alaska)	

FORFEITURE ORDER

Adopted: July 30, 2002

Released: August 1, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eleven thousand dollars (\$11,000) to ACS Television, L.L.C. (“ACS”), licensee of the captioned low power television (“LPTV”) stations, for willful violation of Sections 74.780, 73.3538(a)(1), and 73.3538(a)(4) of the Commission’s Rules (“Rules”).¹ The violations involve ACS’s change in the location of the antenna, the overall height above ground of the antenna structure, the height of antenna radiation center above ground, and the height above mean sea level of the 15 above referenced LPTV stations, without prior authorization granted by the Commission.

2. On January 22, 2002, the Commission’s Anchorage, Alaska Resident Agent Office (“Anchorage Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”), in the amount of thirteen thousand dollars (\$13,000) to ACS for the noted violations.² On February 21, 2002, ACS filed a response to the *NAL*.

II. BACKGROUND

3. On March 21, 2001, agents from the Anchorage Office inspected ACS’s antenna structure, Antenna Structure Registration (“ASR”) Number 1204036, located near Eagle’s Nest Subdivision, Eagle River, Alaska. Antennas for each of the 15 above referenced LPTV stations, licensed to ACS, are mounted on the antenna structure. The ASR lists the geographic coordinates for this antenna structure as: N61 20 8.8, W149 30 56.2. The agents calculated the coordinates for the antenna structure

¹ 47 C.F.R. §§ 74.780, 73.3538(a)(1), and 73.3538(a)(4).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20023278001 (Enf. Bur. Anchorage Office, rel. January 22, 2002).

at the time of the inspection as: N61 20 10.6, W149 30 46.8. According to Commission records, the 15 above referenced stations' antennas are authorized to operate at: N61 20 10, W149 30 43.

4. During the inspection, the agents determined that the antennas on the structure are mounted near the top of the structure, with the antenna panel mountings beginning at a height of approximately 43 meters (141 ft.) and continuing to the top of the structure. According to the ASR, the overall height of the structure above mean sea level is 577.9 meters (1,896 ft.), the overall height above ground, including all appurtenances is 61.0 meters (200 ft.), and the overall height above ground without appurtenances is 54.8 meters (180 ft.). According to Commission records, the 15 LPTV stations are authorized for an antenna height of radiation above ground of 13.95 meters (45 ft.), height of radiation center above mean sea level of 592 meters (1,945 ft.) on a structure with overall height above ground of 18.9 meters (62 ft.).

5. On April 11, 2001, agents from the Anchorage Office verified by direction finding techniques that the above referenced 15 LPTV stations were transmitting from ACS's ASR number 1204036. On April 19, 2001, the Anchorage Office issued a *Notice of Violation* ("NOV"), indicating that the 15 LPTV stations were constructed and operating at variance with the station authorization, in violation of Sections 74.780, 73.3538(a)(1) and (4), and 73.1690(b)(2) of the Rules. In particular, the NOV detailed the variances in geographic coordinates, and the agents' findings that the antennas for the 15 stations were mounted on the tower at a height of approximately 100 feet higher than authorized. On May 8, 2001, ACS submitted a response to the NOV in which it indicated that, "in or around November 1998," the prior owners, Goldbelt Inc., constructed a new tower at Eagle's Nest approximately 100 feet from the tower existing at the time. ACS also indicated that Goldbelt Inc. registered the new tower and transferred the LPTV antenna system to the new tower at Eagle's Nest and removed the old tower. Further, ACS stated that it was not aware of the "improper or unauthorized movement of the LPTV antenna system" until it received the NOV. ACS stated that, as a result of its discovery, it was "proceeding as rapidly as possible" to amend pending applications and to obtain Commission authority for the current operation of the LPTV stations.

6. On July 20, 2001, September 26, 2001, and December 5, 2001, agents from the Anchorage Office reviewed FCC records. This research indicated that no construction permit had been granted authorizing a change in the overall height above ground of the antenna structure, height of radiation center above ground, or height above mean sea level for any of the 15 stations. The records research also revealed that between October 2000 and May 2001, modification applications were tendered for filing, but not yet accepted for filing for 13 of the stations requesting authority to operate at coordinates and antenna heights similar to the stations' current operations.³ On July 19, 2001, six of the LPTV stations received Class A licenses.⁴ The agents also discovered that the Class A licenses authorized operations consistent with the authorizations for the LPTV facilities, but did not reflect authorizations for construction or operation at the coordinates and antenna height at which the stations

³ Modification applications were filed for LPTV stations K39EP, K43EY, K44EQ, K46EN, K49EE, K50EP, K52FI, K53FN, K63FT, K64FA, K65GM, K67GT, and K68FF.

⁴ Stations K39EP, K43EY, K44EQ, K46EN, K49EE, and K50EP were issued Class A licenses on July 19, 2001.

were operating. Moreover, Commission records did not reflect any application filed, tendered, or granted to modify the Class A TV authorizations.

7. On November 9, 2001, agents from the Anchorage Office performed a follow-up inspection of ACS's LPTV station licenses at ACS's office in Anchorage, Alaska. The stations' records did not include any applications or authorizations for construction or operation of the 15 LPTV stations at the existing antenna height. ACS stated that copies of all relevant authorizations and applications would be provided promptly to the Anchorage Office to confirm the requisite authority for operation of the stations. As of the date of the *NAL*, January 22, 2002, ACS had not provided any documentation to the Anchorage Office establishing that it possessed authority to construct or operate its stations' antennas at the existing height on its antenna structure. On January 22, 2002, the Anchorage Office issued the subject *NAL* to ACS for violations of Sections 74.780, 73.3538(a)(1), and 73.3538(a)(4) of the Rules,⁵ for changing the location of the antenna, the overall height above ground of the antenna structure, the height of antenna radiation center above ground, and the height above mean sea level of the 15 LPTV stations, without prior authorization.

8. On February 21, 2002, the Commission received ACS's response to the *NAL*, which seeks rescission or reduction of the proposed forfeiture. In its response, ACS states that it became aware of "an improper or unauthorized movement" of the antennas when it received the *NOV*. As a consequence of the notice, argues ACS, it investigated and discovered that approximately 15 months before ACS acquired the stations in February 2000, the previous owners had constructed a new tower and removed the antennas for the 15 stations to the new tower, raising their height above ground in addition to placing them on the new tower approximately 100 feet away from the old tower. Further, ACS indicates that the previous owner registered the new tower "on or about October 1, 1999," under ASR number 1204036. ACS states that it subsequently modified the registration in August 2000, assuming that it was correcting a minor discrepancy in coordinates.

9. ACS argues that as a result of its discovery that the tower had been replaced in 1998 and the antennas moved by the previous owners, ACS proceeded to correct the situation. According to ACS, the prior owners registered the old tower under erroneous coordinates and ACS subsequently measured the exact location of the current tower and the height above ground of the antenna system. ACS indicates that the antenna structure is now registered under the correct coordinates. ACS contends that in January 2002, it completed and submitted to the Commission the 30 filings necessary to correct the discrepancy in antenna height and to correct the tower coordinates. ACS asserts that the proposed forfeiture should be cancelled or reduced because it "innocently inherited the problems" at the tower site. ACS argues that it took action to correct the problem caused by the previous owners with "reasonable swiftness." ACS acknowledges that several months passed between discovery of the problem and submission of corrective filings at the Commission. ACS argues, however, that careful completion of 30 filings is not a simple task, and that determining the facts of the matter was not a trivial exercise. ACS also claims that the actual discrepancy in location between the old tower and the current tower is "very small in absolute

⁵ The *NAL* also included Section 503(b) of the Communications Act of 1934, as amended, ("Act"), 47 U.S.C. § 503(b), as one of the listed violations. However, the inclusion of Section 503(b) of the Act as one of the listed violations was inadvertent. Moreover, no portion of the forfeiture amount was based on a violation of this section. Therefore, Section 503(b) of the Act is no longer included as one of the listed violations in this proceeding.

terms.” Finally, ACS argues that the proposed \$1,000 forfeiture for failure to maintain records is “duplicative” and unwarranted, and that it has a history of overall compliance.

III. DISCUSSION

10. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act, Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining ACS's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

11. We disagree that the proposed forfeiture amount should be cancelled or reduced because ACS took actions to correct problems caused by others. We find that ACS as licensee was responsible for ensuring compliance with our rules.⁸ In this regard, we note that although ACS argues that it acted “with reasonable swiftness” to correct the problems, the fact remains that almost nine months had passed before ACS took any action. Specifically, the Anchorage Office issued the *NOV* on April 19, 2001, and ACS submitted corrective filings to the Commission on January 8, 2002. Further, ACS's remedial efforts to correct the violations do not warrant rescission or reduction of the forfeiture.⁹

12. We agree with ACS's argument that the proposed forfeiture should be reduced because the actual discrepancy in location between the old tower and the current tower is “small in absolute terms.” Accordingly, we reduce the forfeiture for the Section 73.3538(a)(1) violation by \$1,000 from the base amount of \$4,000. We are not persuaded, however, that ACS's overall history of compliance justifies a reduction in the overall forfeiture. A search of the Commission's records indicates that the Commission's staff issued Official Notices of Violation to ACS on December 28, 2001 and April 12, 2001. Therefore, no downward adjustment for an overall history of compliance is warranted in this case.¹⁰ Finally, ACS argues that the \$1,000 proposed forfeiture for failure to maintain records is unwarranted and should be cancelled. Based on our review of the record, we find that the \$1,000 forfeiture assessed for this violation should be cancelled.

IV. ORDERING CLAUSES

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979).

⁹ *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁰ See *Arnold Broadcasting Company*, 16 FCC Rcd 267, 269 (Enf. Bur. 2001), *application for review granted in part for other reasons and denied in part*, 16 FCC Rcd 13600 (2001); and *Crown Communication, Inc.*, 15 FCC Rcd 21937 (Enf. Bur. 2000).

13. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ ACS LIABLE FOR A MONETARY FORFEITURE in the amount of eleven thousand dollars (\$11,000) for changing the location of the antenna, the overall height above ground of the antenna structure, the height of antenna radiation center above ground, and the height above mean sea level of the 15 above referenced stations, without prior authorization granted by the Commission in willful violation of Sections 74.780, 73.3538(a)(1), and 73.3538(a)(4) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 20023278001 and FRN 599308. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

15. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to ACS Television, L.L.C., 510 L Street, Suite 500, Anchorage, Alaska 99501, and to its counsel, Charles R. Naftalin, Esq., Holland & Knight, LLP, 2099 Pennsylvania Avenue., N.W. Suite 100, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.